

PROSECUTORS ADDRESS (cont'd)

of the document must be presumed false. If we adhere to that principle the whole of the evidence of the accused must be discarded. If you think the man is suffering, not from a physical defect or pain but by a mental disease he should be sent from detention to a Neurological Hospital. All these cases must be reviewed by Neurologists. I respectfully submit to this court that the accused ~~XXX~~ is guilty of boldly malingering and I request that he be found guilty

ADDRESS BY THE DEFENCE

The defence submits in closing, an address in writing which is attached hereto. *and makes it*  
*to put upon the prosecution of the accused to be tried separately*  
*on the first charge under Sub 62(F)*  
The Court closes for a finding.

The Court re-opens and proceeds to try the accused on the first charge.

FIRST WITNESS

For the  
prosecutor

E11170 A/Cpl Racine, R de Chaud, 3 Cdn.Div.Inf.Reinf.Unit, a soldier of the Canadian Army Overseas, having been duly sworn and identified the accused, states:

Q./ On the 29th July 42 did you have occasion to give the accused an order?

A./ Yes

Q.2 In your own words tell the Court what happened.

A.2 On the 29th July 42 I was in charge of the Battle Drill Platoon. The accused came to report to me. He was limping but I told him he would have to join the others. He answered, I cannot go on with Battle Drill. I have a pain in my right leg. Seeing the man was limping I did not want to take it upon myself to make him so I went to see my Coy. Commander and referred the case to him.

I ordered him to fall in. He answered, I cannot do it, I have too much pain in my leg. I repeated the order saying if he did not obey he would be sent back under close arrest.

Q.3 Did the accused obey your order to fall in on parade?

A.3 No.

Q.4 Had the accused ample time to obey your order

A.4 Yes Sir I gave him plenty of time.

CROSS EXAMINATION BY THE DEFENCE

Q.5 Do you know if the man was sick or not?

A.5 I do not know if the man was sick or not. As far as limping was concerned, he may have been. I did not know so I went and got some information.

Q.6 Did he report on time?

A.6 The accused did not report on parade on time.

Q.7 What time was parade.

A.7 I do not remember the hour of the parade.

Q.8 What time did he report?

A.8 I do not remember the exact time.

Q.9 How late was he?

A.9 He was quite late because I had one period completed.

Q.10 Was he excused duty or light duty?

A.10 No Sir he was to attend the Battle Drill period.

Q.11 Can you tell us whether he could do Battle Drill?

A.11 The accused could do the Battle Drill because he was not excused or on light duty. I am in charge of the whole Coy. for Battle Drill period.

Q.12 Is he in your platoon?

A.12 There was only three sections of training. He was in my platoon.

EXAMINATION BY THE COURT